IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17053 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIVYESHBHAI MANEKLAL SHAH P.O.A. OF RAMESHKUMAR S PATEL
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 17053 of 2003
MR UMANG K CHOKSI for Petitioner No. 1
MR PRADIP D BHATE, AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 14/12/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226/227 of the

Constitution of India, the petitioner has challenged the legality and validity of the order passed by respondent No.3 dated 7.6.2003, by which, in exercise of the powers under Section 32-A of the Bombay Stamp Act, 1958 (`the Act' for short) the petitioner is called upon to pay the amount of Rs.20,645/- being the deficit stamp duty and Rs.250/- by way of penalty, in all Rs.21,895/-.

#. The petitioner purchased the property in question by registered sale deed dated 15.09.1994. It is the case of the petitioner that the petitioner used requisite stamp duty considering the market price of the land in question which was prevalent at the relevant time. The said document was presented before the Sub-Registrar, Ahmedabad immediately i.e. in the year 1994 itself. It appears that the Sub-Registrar, Ahmedabad was of the opinion that the market value which has been fixed by the petitioner is on lower side and that proper stamp duty is not affixed. He made reference to respondent no. 3 under Section 32-A of the Act for determining the proper market value. Notice under Rule 4 of the Market Value Rules, 1984 (`the Rules' for short) came to be issued by respondent no. 3 on 13.03.2003. The petitioner made oral submissions and requested to consider the market value considering the document with regard to the neighbouring area.

#. It is the case of the petitioner that the question with regard to exercise of the powers after unreasonable period also came to be raised, however, respondent no. 3 passed the impugned order on 07.06.2003 deducting 15% of the value which was provisionally fixed while issuing the notice under Rule 4 of the Rules and fix the market value of the property in question at Rs.4,68,506/- and directed the petitioner to pay the amount of Rs.20,645/- being the deficit stamp duty with penalty of Rs.250/- which is the subject matter of the present petition under Article 226/227 of the Constitution of India.

#. Mr.Choksi, learned advocate appearing for the petitioner, has submitted that exercise of the powers by respondent no. 3 after unreasonable period i.e. after a period of almost 8 years which could not have been exercised by respondent no. 3 without any justification for delay. He submitted that the impugned order dated 07.06.2003 is a non-speaking order and no reasons have been mentioned by respondent no. 3 fixing and determining the market value of the property in question at Rs.4,68,506/-. He further submitted that, in fact, Rule 4 of the Rules is not complied with and along with the notice under Rule 4 of the Rules, the petitioner is

not served with any basis/document upon which provisional market value was fixed by respondent no. 3. He has relied upon the unreported judgment of the learned single Judge of this Court in the case of Ambuja Metal Industries V/s State of Gujarat rendered in Special Civil Application No.6554 of 2000 with Special Civil Application No.2794 of 2001, unreported judgment of the learned Single Judge of this Court in the case of Kumarpal rendered in Special Civil Application No.4434 of 2003 and another unreported judgment of the learned Single Judge of this Court in Special Civil Application No.1258 of 2003 in support of his submissions and submitted that respondent no. 3 could not have exercised his powers after unreasonable period without justifying the delay. He submitted that as held by the Full Bench of this Court, procedure which is required to be followed under Rule 4 of the Rules which is held to be mandatory one is not followed and, therefore, requested to allow the present petition.

#. Mr.Bhate, learned A.G.P. has tried to support the impugned order dated 07.06.2003. He submitted that after considering the oral submissions made by the petitioner, respondent no. 3 has passed the order determining the market value of the property in question which is fixed at Rs.4,68,506/-. However, Mr.Bhate is not in a position to support the aforesaid order insofar as the order being non-speaking order as well as on the ground of delay.

#. Heard the learned advocates for the parties.

#. The transaction in question took place on 15.09.1994 and the notice under Rule 4 of the Rules came to be issued for the first time on 13.03.2004 i.e. after a period of nine months. No affidavit in reply is filed on behalf of the respondents justifying the delay in initiating the proceedings under Section 32-A of the Act. Even in the notice under Rule 4 of the Rules and in the impugned order there is nothing which can justify the delay in initiation of the proceedings under Section 32-A of the Act. Even in the notice which is issued under Rule 4 of the Rules, no particulars are given and no basis is shown by respondent no. 3 fixing the provisional market value and even in the impugned order dated 07.06.2003, nothing has been mentioned as to on what basis respondent no. 3 has fixed the market value of the property in question at Rs.4,68,506/-. Thus, the impugned order is illegal and arbitrary as the same is without any basis. Under the circumstances and in view of the fact that no reasons have been assigned determining the market value of the property in question

at Rs.4,68,506/-, the impugned order dated 07.06.2003 is required to be quashed and set aside and the matter is remanded to respondent no. 3 for deciding afresh on its own merits and in accordance with law and after giving opportunity to the petitioner. It will be open for the petitioner to raise all the contentions which are available to him inclusive of the question of limitation and shall point out the judgments of this court upon which reliance is placed by him. It is hoped that respondent no. 3 will consider the said judgments also.

#. For the reasons stated hereinabove, impugned order dated 07.06.2003 is quashed and set aside. The matter is remanded to respondent no. 3 to decide and dispose of the same afresh on its own merits and in accordance with law and considering the observations made in this order.

#. This petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)